THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.19420 OF 2006

ORAL ORDER:

The petitioner does not dispute the fact that he had availed SOD facility from the 2nd respondent-Bank in February, 2003. It appears that he failed to discharge the loan as per the terms agreed upon and, consequently, the respondents having invoked the provisions of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the Act"), issued a notice dated 7.10.2005 under Section 13(2) of the Act, calling upon the petitioner to discharge his liability in full and pay a sum of Rs.10,34,342.65 ps together with interest within 60 days, failing which they would exercise the rights against the mortgage property under Section 13(4) of the Act. The petitioner having received the said notice, made several representations, including the representations dated 3.8.2006 and 5.8.2006, requesting the respondents to consider his proposal for one-time-settlement and also to permit him to sell the mortgaged property.

The petitioner alleges that the respondents had not only failed to consider the said representations, but they have also been attempting to dispossess him without issuing any further notice under the Act. It is alleged that on 23.9.2006 the staff of the 2nd respondent-Bank came to the flat (secured asset) of the petitioner and attempted to take possession. Hence, this writ petition.

Sub-section (3A) of Section 13 of the Act entitles the borrower to make a representation, or raise any objection on receipt of notice under sub-section (2) of Section 13 of the Act. If any such representation is made, the secured creditor shall consider the same and if the secured creditor comes to the conclusion that the representation is not acceptable or tenable, he shall communicate the reasons for non-acceptance of the representation within one week. In the case on hand, the petitioner alleges that no such order has been

passed by the respondents so far and the respondents have not even issued a notice under Section 13(4) of the Act.

Having regard to the mandatory provisions under the Act and having regard to the facts and circumstances of the case on hand, without expressing any opinion as to the correctness of the allegations made by the petitioner, the writ petition is disposed of with a direction to the respondents not to dispossess the petitioner from the flat in question without following the procedure laid down under Section 13 of the Act. No costs.

_____

(G. ROHINI, J.)

26th September, 2006.
Operative portion by wire;
and issue CC by tomorrow.

Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.19420 OF 2006

26th September, 2006.

Between:

P. Manohar Rao. .. Petitioner.

And

The Jammu & Kashmir Bank Limited,
Zonal Office, represented by its Zonal Officer,
6th Floor, the Eagle's Flight, Suren Lane,
Andheri-Kurla Road, Andheri East, Mumbai and
another. .. Respondents.